VENABLE, BAETJER, HOWARD & CIVILETTI, LLP
Including professional corporations

1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005-3917
(202) 962-4800, Fax (202) 962-8300
www.venable.com

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DEC 1 - 1997

Federal Communications Commission
Office of Secretary

December 1, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CC Docket No. 96-128 - Petition for Reconsideration

Dear Sir or Madam:

Enclosed please find an original and eleven (11) copies of The Direct Marketing Association's Petition for Reconsideration in the above-referenced docket.

We are also this day forwarding two (2) copies of the Petition to the Common Carrier Bureau, and two (2) copies to the Bureau's Division of Enforcement.

Finally, we are enclosing one (1) extra copy of the Petition, which we ask that you date-stamp and return with the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Heather L. McDowell (pj)

Heather L. McDowell

HLM/pj
Enclosures

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DEC 1 5 1997

Federal Communications Commission
Office of Secretary

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the Telecommunications	)	
Act of 1996	)	

PETITION FOR RECONSIDERATION OF THE DIRECT MARKETING ASSOCIATION

Pursuant to section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, The Direct Marketing Association ("The DMA") hereby petitions the Commission to reconsider its decision to apply to subscriber 800 and other toll free SACs (collectively "subscriber 800") calls the same compensation rate applied to other types of compensable calls made from pay telephones. Subscriber 800 numbers offer unique public benefits. The advantages that they offer, however, can only be fully realized if they remain cost effective. The new payphone compensation rate for subscriber 800 calls will increase dramatically the cost of these calls to toll-free number subscribers. Ultimately, this will lead to a rise in prices for a host of consumer goods and services. There is nothing in the mandate of the Telecommunications Act of 1996[1/] that requires compensation rates for all uses of payphones be the same. The 1996 Act only requires "fair" compensation to payphone service providers ("PSPs") for calls made from their pay telephones. The

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1/ Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

Commission's Second Report and Order[2] ignores the economic hardships that all consumers will suffer if the cost of subscriber 800 calls is raised so drastically. The Commission's decision, therefore, must be reconsidered.

I. SUBSCRIBER 800-NUMBERS UNIQUELY SERVE THE PUBLIC INTEREST AND WARRANT SPECIAL POLICY CONSIDERATION

The DMA's membership includes thousands of small and large businesses that use subscriber toll-free numbers. Toll-free numbers maximize the accessibility of many products and services to all consumers. Businesses and consumers alike are well-served by their continued availability. Payphones to dial toll-free numbers are often used by the traveling public. For example: airline companies (for reservations or flight information); hotels, motels, and other lodging establishments; ground transportation companies (e.g., taxis, limousines, buses); and travel agents are among the travel-related industries that regularly offer toll-free service. Other examples include using a payphone to reach the toll-free number of a towing or car repair service or an employee's own employer (e.g., for voice mail). In addition, the public uses payphones to call toll-free numbers offered by "help-lines" or "crisis-lines" providing resources, counseling, or information to those in need. Applying the same compensation rate to subscriber 800 calls that may apply to other types of compensable payphone calls threatens the viability of subscriber 800 numbers in many of these applications.

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[2] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Report and Order, __ FCC Rcd. ___, FCC 97-371, CC Dkt. No., 96-128 (Released October 9, 1997) ("Second Report and Order")

The Commission must first recognize that payphone compensation requirements of the 1996 Act are actually rather modest. Carriers must compensate PSPs for "each and every" interstate payphone call.[3/] Yet, PSPs need only be "fairly" compensated.[4/] The 1996 Act does not mandate that all calls be compensated at the same rate. The compensation level the Commission established for subscriber 800 calls certainly compensates PSPs. But it is not "fair" if it substantially harms the greater public interest value of toll-free service.

Businesses, which must either pay more or risk losing customers, are the most obvious victims of the added costs of subscriber 800 payphone calls under the Commission's rules. Carriers required to compensate PSPs will, in turn, raise the costs of the toll-free service they offer. Millions of toll-free subscribers will be affected by this increase.

Yet, as 800-number subscribers' rates go up, businesses - particularly in travel-related fields - also will be forced to pass the added expense on to consumers. Thus, the inevitable fallout from the high payphone compensation rate the Commission prescribed for these calls will be higher prices for virtually every consumer good and service, and the travel industries will be especially hard hit.

Perhaps more troubling is the possibility that financially precarious 800-number subscribers will be forced to stop offering 800-numbers that can be used from pay

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3/ 47 U.S.C. §276(b)(1)(A).

4/ Id.

telephones. The modified default rate, 28.4 cents, assumes a coin call costing 35 cents, far higher than the rate currently in effect in most jurisdictions. Furthermore, when the transition to market-based rates is complete, the actual local coin rate could be even higher, may be vastly different in different parts of the country, and may increase, nationwide, over time. In the end, it would serve no one to discontinue (or block) a crisis line offering counseling to victims of abuse, to runaways, to the depressed or suicidal, to the hungry or homeless. The compensation rate the Commission has established, however, threatens to do just that. A mere 6.6 cent reduction in the market rate for coin calls may be too high a price for such organizations to absorb.

The Commission must weigh the concerns not only of PSPs, but also the carriers that pay them, and the impact of market-based or other pre-established compensation rates will have on the public in general. The Second Report and Order (like the First) fails to factor into the analysis these important public interest considerations.

II. THE SUBSCRIBER 800 COMPENSATION RATE IS NOT PROPERLY RELATED TO COST-CAUSATION

Imposing the same compensation rate for subscriber 800 calls as applies to dial around and other types of pay telephone traffic is at odds with Commission policies to ensure that cost recovery and cost causation are closely tied together. Toll-free number subscribers do not "cause" any payphone-related costs. Indeed, an 800-number subscriber has utterly no control over whether or not a payphone is used to place an incoming call. The added cost to toll-free subscribers will be passed through to all consumers (not just those who use payphones) in the price of the goods or services offered by these subscribers. By contrast, for example, carrier costs for compensating a

PSP for dial around traffic will be passed through to callers that actually use the access code for that carrier at a payphone.

Moreover, the 800 subscriber call compensation rate imposes a disproportionate economic burden on 800 subscribers, even if they could be held to account for the "costs" of such calls as no more than passive recipients of incoming calls. While carrier rates for subscriber 800 service will most certainly increase, it is impossible to determine how many calls to a particular toll-free number subscriber will be made from payphones. Thus, toll-free number subscribers' costs will certainly go up, but the increase will not bear any direct relationship to the number of toll-free calls placed from payphones. In effect, toll-free number subscribers will wind up paying some portion of the <u>total</u> additional expense to carriers of compensating <u>all</u> types of interstate payphone traffic. Such a result is particularly unjust when toll-free number subscribers are providing a service that so clearly benefits the public.

Some parties to this proceeding have claimed that call blocking affords subscribers and carriers some measure of control over payphone use. It does not. The evidence in this record indicates that blocking is not generally available. Moreover, even if it became widely available, it is not a realistic option: It is bad enough that the 800-subscriber may lose potential customers, but the lost opportunities for consumers if their calls are blocked are far worse. For instance, blocking a call to a hotel merely because it originates from a pay telephone would not only deprive the hotel of a potential customer, but also defeat the caller's expectations. Toll-free numbers are often the best way to reach someone; consumers away from home often have little choice but to use a pay telephone.

Treating subscriber 800 calls and other compensable payphone calls alike flies in the face of the cost-causation standards that the Commission has worked to promote in implementing other requirements and principles embodied in the 1996 Act. It effectively requires toll-free number subscribers to subsidize all types of payphone calls, and fails to ensure that cost recovery is tied to cost causation.

CONCLUSION

There is simply no justification for the Commission's decision to apply the same compensation rate to all types of pay telephone calls. The Commission, must, therefore, re-examine its Second Report and Order, and set a compensation rate that recognizes the special role of toll-free numbers in the pay telephone marketplace.

Respectfully submitted,

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard, & Civiletti, L.L.P.
1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005
202/962-4800

Counsel for The Direct Marketing Association

December 1, 1997